

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
WORKERS' COMPENSATION AGENCY

NOTICE OF PUBLIC HEARING

September 27, 2012
10:00 a.m.

RULE SET # 2012-023 LR

The Department of Licensing and Regulatory Affairs, Workers' Compensation Agency, will hold a public hearing on Thursday, September 27, 2012, starting at 10:00 a.m. at the Department of Licensing and Regulatory Affairs, State Secondary Complex, General Office Building, 7150 Harris Drive, Dimondale, Michigan, in the offices of the Workers' Compensation Agency, First Floor, B-Wing.

The public hearing will be held to receive comments from interested persons on amendments to the Workers' Compensation Agency Rules in the Michigan Administrative Code as follows: R 408.48 -- allowing workers' disability wage loss compensation weekly payments to be made by electronic transfer, direct deposit, and debit card; and R 408.59 -- updating the definitions and use of terms.

These rules are promulgated by authority conferred on the director of the Workers' Compensation Agency by section 205 of 1969 PA 317, MCL 418.205; section 48 of 1969 PA 306, MCL 24.248; and, Executive Reorganization Order Nos. 1996-2, 1999-3, 2002-1, and 2003-1, MCL 445.2001, 418.3, 445.2004, and 445.2011. Rules adopted under these sections become effective seven days after filing with the Secretary of State.

The Rule Set 2012-023 LR is published on the state of Michigan website at <http://www7.dleg.state.mi.us/orr/Rules.aspx?type=dept&id=LR> and in the September 15, 2012 issue of the *Michigan Register*. A copy of the proposed rules may be obtained by contacting Sue Bickel at (517) 322-1106 or email at bickels@michigan.gov.

Comments on the proposed rules may be presented in person at the public hearing. In addition, written comments will be accepted until 5:00 p.m. on September 27, 2012, at the following address or email address:

Department of Licensing and Regulatory Affairs
Workers' Compensation Agency
PO Box 30016
Lansing, MI 48909
Attention: Jack A. Nolish, Deputy Director
Email: nolishj@michigan.gov

The hearing site is accessible, including handicapped parking. Individuals attending the hearing are requested to refrain from using heavily scented personal care products in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations such as information in alternative formats in order to participate in the hearing should contact Sue Bickel at (517) 322-1106 at least 14 working days before the hearing.

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
111 S. Capitol Ave.; 4th Floor, Romney Building
PO Box 30004; Lansing, MI 48909
Phone (517) 335-8658 FAX (517) 335-9512

**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2012-023 LR

ORR rule set title:

Workers' Compensation Agency – General Rules

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Workers' Compensation Agency

Name and title of person completing this form; telephone number:

Jack A. Nolish, Deputy Director

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

These rules bring the Workers' Compensation Agency's processes into line with modern business practices by facilitating the direct transfer of funds to injured worker bank accounts for payment of weekly wage loss benefits following appropriate federal banking regulations. In the case of workers without banking relationships, debit cards such as those used by the Unemployment Agency and other state benefit payment systems, will facilitate transfer of funds from carriers or employers. Both types of transfers offer significant costs savings to business.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

The proposed revisions to the rules will not restrict business conduct but will provide low cost alternatives for payment of weekly wage loss benefits. Current rules require mailing of paper checks on a weekly basis, costing business \$2-\$4 per check plus postage.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

Rules do not conflict with federal banking practices and will be coordinated with any such requirements.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

Thousands of weekly benefit checks are issued each week by workers' compensation insurance carriers and self-insured employers. These changes will reduce the cost of processing and mailing such checks. This will also overcome problems that occur with checks being lost in the mail or stolen from point of delivery. The changes will also speed the delivery of wage loss compensation benefits to injured workers and their families who are dependent on such benefits for survival.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

Business costs will continue to increase as the cost of processing and mailing paper checks continues to increase.

(6) Describe how the proposed rule (s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Electronic transfer of funds to an injured worker improves the welfare of the injured workers and their families by enabling needed wage loss compensation to be available on a more predictable time line. Those without banks can use a debit card at most retailers and other service providers. Cash can be obtained from readily available ATMs.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

These rules will complement existing benefit payment options. Smaller carriers and employers may not wish to participate in electronic transfer/debit card options.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

No fiscal impact on the agency.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

None required.

Impact on Other State or Local Governmental Units:

(10) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

State government and many other units of government are self-insured. Reducing administrative costs in processing/paying wage loss benefits through direct deposit/debit card will reduce overall operating costs. Most such units already pay their employees by such means so expanding that process to include their worker's compensation obligations will be a substantial cost savings and improve efficiency.

(11) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

Rules are optional.

(12) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

None required.

Rural Impact:

(13) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

No difference in impact between urban/rural. Employers in Michigan are either insured or approved for self-insurance. In most cases, the benefits are paid through carriers or third party administrators without regard to geographic considerations.

Environmental Impact:

(14) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

Minor through reduced use of paper and reduced mail.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

(15) Describe whether and how the agency considered exempting small businesses from the proposed rules.

No consideration required since the rule is optional.

(16) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

None required since small business workers' compensation claims are generally paid by carriers through their large scale accounting systems.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

None.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

None required.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

None required.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

None required.

(17) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

None.

(18) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

Not applicable.

(19) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

None.

(20) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

None.

(21) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Not applicable.

(22) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Rule is optional so there is no need for exemption or lesser standards.

(23) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Not applicable.

(24) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

Businesses of all sizes are represented on the Director's Advisory Committee which reviewed the rule proposal without objection.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(25) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The implementation of the options afforded by the rules will result in business cost reductions through lower claims costs to the self-insured employers and reduced premium costs to insured employers due to cost savings to carriers.

(26) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

No significant costs since these types of direct deposit/debit card funds transfers are already in widespread use.

(27) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Cost reductions are expected to be \$2-\$4 per check per week savings.

(28) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The primary and direct benefit will be a decrease in claims administrative costs.

(29) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

Reducing workers' compensation administrative costs will increase business profitability.

(30) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

None.

(31) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

Requests for such an option from the business community; presentations by debit card vendors.

Alternatives to Regulation:

(32) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

No reasonable alternative since the rules in place dictate mailing of paper checks.

(33) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The electronic funds transfers and debit card services work through banks and other vendors.

(34) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The proposed rule change is a significant alternative to existing rules and policies that require mailing of costly paper checks for workers' compensation benefits.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

8-3-12

Date RIS approved:

8-14-12

ORR assigned rule set number:

2012-023 LR

Date of disapproval:

Explain:

More information needed:

Explain:

